

<sup>2</sup> The Board notes that following the February 7, 2020 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On November 20, 2012 appellant, then a 54-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed plantar fasciitis of the right foot and associated pain extending through her right ankle, as a result of factors of her federal employment, including prolonged walking and standing. She noted that she first became aware of her condition on November 12, 2012 and first realized its relationship to her federal employment on November 16, 2012. Appellant stopped work on November 16, 2012. On March 11, 2013 OWCP accepted her claim for tenosynovitis of right foot and ankle and bilateral plantar fibromatosis. On September 18, 2013 appellant accepted a modified-duty position.

In an October 16, 2019 medical note, Dr. Jason Manuel, a podiatrist, noted that appellant had continued and worsening pain in her right foot. Appellant reported that it felt like she was “walking on her ankle.” Dr. Manuel diagnosed severe posterior tibial tenosynovitis of the right foot and recommended that appellant remain off work for a minimum of one month. In a work restriction note of even date, he indicated that she was totally incapacitated for the period October 16 through November 16, 2019. In a duty status report (Form CA-17) of even date, Dr. Manuel found that appellant suffered from a reoccurring occupational medical condition arising from a November 9, 2009 event. He diagnosed posterior tibial tendon dysfunction and again advised that she could not resume work.

In a November 13, 2019 medical note, Dr. Manuel noted that appellant presented for follow up of her right foot tenosynovitis. Appellant indicated that her pain was at least 50 percent resolved and that the sharp pain had decreased to a throbbing type of pain. Dr. Manuel diagnosed acute right posterior tibial tenosynovitis and posterior tibial tendon dysfunction. He recommended she remain in “no work” status through November 22, 2019, after which appellant may resume work with light-duty restrictions. In a work restriction note of even date, Dr. Manuel opined that she was totally incapacitated for the period November 16 through 22, 2019. In a Form CA-17 of even date, he also diagnosed acute posterior tibial tenosynovitis and advised appellant could return to work with restrictions on November 23, 2019.

On November 26, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 16 through November 22, 2019. On a time analysis form (Form CA-7a), she claimed that she used 216 hours of leave without pay (LWOP) for disability from work for the claimed period. A human resource specialist with the employing establishment noted on the same form that appellant had not worked since October 16, 2019 and certified the use of 216 hours of LWOP.

In a development letter dated December 5, 2019, OWCP informed appellant of the type of medical evidence needed to support her claim for disability for the period October 16 through November 22, 2019. It afforded her 30 days to submit the requested information.

In a December 23, 2019 narrative report, Dr. Manuel reported that appellant suffered from the onset of symptoms of posterior tendinitis associated with specific work factors in November 2009, which involved repetitive walking, pushing, pulling heavy equipment, and lifting 70 pounds. He indicated that she was treated for this condition since November 2009, but it had deteriorated over time with work. Dr. Manuel observed that appellant demonstrated an inability to mobilize her foot and difficulty walking, standing, or getting up from a seated position. He also

noted that she frequently caught herself from falling at home and at work while getting up from a seated position. Dr. Manuel opined that appellant's limited mobility would most likely interfere with her ability to carry out her normal daily routines safely and could result in more falling. He diagnosed advanced stage posterior tibial tendon dysfunction, right foot and ankle edema, and severe right foot posterior tibial tenosynovitis.

Dr. Manuel explained that work activities such as repetitive walking or standing on concrete floors for seven hours a day, as well as pushing, pulling, lifting, and carrying heavy loads would "certainly exacerbate" posterior tendinitis slowly over time. He opined that this was "most likely" the case with appellant because she experienced some relief during extended periods of rest from work while she suffered from more pronounced severe symptoms once she returned to her work activities. Dr. Manuel explained that posterior tendinitis is a progressively degenerative disease of the foot and ankle that impairs the tendons' ability to support the arch. If it was left untreated or with continued overuse, the disease becomes progressively more advanced. Dr. Manuel noted that appellant was restricted from work for the period October 15 through November 22, 2019 and was placed on light-duty restrictions thereafter pending follow-up examinations. He further advised that it was preferable for her to find other work that did not require walking on concrete for seven to eight hours a day, as her condition was permanent, and that the current treatment plan for appellant was designed to aid in deterring further degeneration rather than provide a cure for the disease.

In a December 23, 2019 attending physician's report (Form CA-20), Dr. Manuel again indicated by checking a box marked "Yes" that appellant suffered from the onset of symptoms of posterior tendinitis associated with a specific event that occurred on November 9, 2009. He diagnosed posterior tibial tendon dysfunction and found that she was totally incapacitated for the period November 16 through 22, 2019.

In a December 27, 2019 statement, appellant clarified that her reoccurring occupational right foot condition noted in CA-17 forms was not a new injury, but an existing occupational disease she continued to suffer from. She also clarified that her date of injury was November 12, 2009, but that she erroneously put it as November 9, 2009 on the CA-7 forms.

Appellant also submitted reports dated December 11, 2019 and January 8, 2020 from Dr. Manuel, wherein he provided examination findings involving her right foot.

By decision dated February 7, 2020, OWCP denied appellant's claim for wage-loss compensation for the period October 16 through November 22, 2019. It found that the medical evidence of record was insufficient to establish that she was totally disabled from work during the claimed period as a result of her accepted conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of

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<sup>3</sup> *Supra* note 1.

FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

Under FECA, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>6</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of reliable, probative and substantial medical opinion evidence.<sup>8</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period October 16 through November 22, 2019 causally related to the accepted employment conditions.

Dr. Manuel, in his December 23, 2019 narrative report, opined that appellant had been disabled for the period October 16 through November 22, 2019 and attributed her disability to posterior tendinitis associated with a specific work event in November 2009. He observed that appellant demonstrated an inability to mobilize her foot and difficulty walking, standing, or getting up from a seated position. Dr. Manuel advised that her limited mobility would most likely interfere with her ability to carry her normal daily routines safely. He diagnosed advanced stage posterior tibial tendon dysfunction, right foot and ankle edema, and severe right foot posterior tibial tenosynovitis. Dr. Manuel explained that posterior tendinitis is a progressively degenerative

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<sup>4</sup> A.B., Docket No. 18-0834 (issued June 11, 2020); N.S., 59 ECAB 422 (2008).

<sup>5</sup> *Id.*

<sup>6</sup> *See B.C.*, Docket No. 18-0692 (issued June 5, 2020).

<sup>7</sup> *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

<sup>8</sup> 20 C.F.R. § 10.5(f); *see W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

disease of the foot and ankle that impairs the tendons' ability to support the arch and becomes progressively more advanced if it was left untreated or with continued overuse. He opined that work activities such as repetitive walking or standing on concrete floors for seven hours a day, as well as pushing, pulling, lifting, and carrying heavy loads would "certainly exacerbate" posterior tendinitis slowly over time. However, Dr. Manuel did not provide a pathophysiological explanation as to how appellant's modified job duties as a mail handler worsened the accepted conditions of tenosynovitis of right foot and ankle and bilateral plantar fibromatosis such that she could no longer work or how they caused posterior tibial tendon dysfunction. Although Dr. Manuel opined that appellant was totally disabled from work, his opinion is conclusory in nature and fails to explain, with detail, how the accepted right foot conditions were responsible for her disability.<sup>10</sup> Appellant has not met her burden of proof to establish additional conditions as work related. This report is, therefore, of limited probative value and insufficient to establish the claimed period of disability.<sup>11</sup>

In a December 23, 2019 attending physician's report, Dr. Manuel diagnosed posterior tibial tendon dysfunction and opined that appellant was totally disabled from work for the period November 16 through 22, 2019. He checked a box marked "Yes" indicating that the onset of symptoms of appellant's November 9, 2009 employment injury was the cause of her current condition. The Board has held, however, that when a physician's opinion as to the cause of a period of disability consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>12</sup> Thus, this report is also insufficient to establish the claimed period of disability.

In duty status reports dated October 16 and November 13, 2019, Dr. Manuel merely diagnosed posterior tibial tendon dysfunction and acute posterior tibial tenosynovitis and found that appellant could resume work with restrictions on November 23, 2019 without providing an opinion on disability. Without an opinion regarding how the accepted conditions caused the claimed disability, these reports are insufficient to establish the claimed period of disability.<sup>13</sup>

Dr. Manuel, in his work restriction notes dated October 16 and November 13, 2019, indicated that appellant was totally incapacitated for the period October 16 through November 22, 2019. These notes also fail to provide a probative medical opinion on whether she was disabled on the dates at issue due to her accepted right foot conditions.<sup>14</sup> Consequently, these notes are also insufficient to meet appellant's burden of proof.

Finally, appellant also submitted additional reports dated December 11, 2019 and January 8, 2020 from Dr. Manuel. The Board notes that these reports do not address appellant's medical condition during the claimed period of disability, October 16 through November 22, 2019,

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<sup>10</sup> *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

<sup>11</sup> *T.H.*, Docket No. 19-0436 (issued August 13, 2019); *C.B.*, Docket No. 18-0040 (issued May 7, 2019).

<sup>12</sup> *See O.M.*, Docket No. 18-1055 (issued April 15, 2020).

<sup>13</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *Id.*

and do not contain an opinion on disability during the claimed period. Therefore, they also have no probative value on the underlying issue of this case.<sup>15</sup>

As the medical evidence of record does not contain a rationalized medical opinion, which based on objective medical findings, related that appellant was disabled from work during the claimed period due to her accepted employment conditions, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish total disability for the period October 16 through November 22, 2019 causally related to the accepted employment conditions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2020, decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> *Id.*